

JUL 27 2016

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

BRYAN GLYNN,

Plaintiff,

v.

HAVANA GROUP CIGARS, INC.

Defendant.

Civil Action No.: 316 CV 00054

COMPLAINT AND JURY
DEMAND

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff, BRYAN GLYNN ("Plaintiff"), brings this complaint in the United States District Court for the Western District of Virginia against HAVANA GROUP CIGARS, INC. ("Defendant"), alleging as follows:

PARTIES

1. Plaintiff is is a United States citizen and internationally-recognized photographer who currently resides in Holiday, Florida.
2. On information and belief, Defendant is a corporation existing under the laws of the State of Florida, with headquarters in Miami Lakes, Florida. Defendant is a members only, luxury cigar lounge and bar featuring a digitally controlled humidor stocked with over 1,000 cigars and private cigar lockers.

JURISDICTION AND VENUE

3. This is a civil action seeking damages for copyright infringement under the copyright laws of the United States (17 U.S.C. § 101 et seq.).
4. This Court has jurisdiction under 17 U.S.C. § 101 et seq.; 28 U.S.C. § 1331 (federal question); and 28 U.S.C. § 1338(a) (copyright).
5. This Court has personal jurisdiction over the Defendant, and venue in this District is proper under 28 U.S.C. § 1391(b) and 28 U.S.C. § 1400(a), in that a substantial part of the acts of infringement complained of herein occurred in this District.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

6. Plaintiff is a talented and experienced commercial photographer. His photographs, particularly those of cigars and cigar details, are displayed and licensed worldwide on his business website, http://cigarobsession.com/cigar_art/ (image 94/250). Plaintiff includes a “BGPictures” logo in the bottom left corner of each of his posted photographs on his business website.
7. Plaintiff captured the Copyrighted Photograph on November 21, 2009. The Copyrighted Photograph was first published on his business website on June 18, 2011.
8. Plaintiff registered the Copyrighted Photograph on October 22, 2015 (VAU 1-224-378).
9. Beginning on or around January 21, 2013, Defendant copied and posted the Copyrighted Photograph on their company website, www.havanagroupcigars.com, on two separate occasions: www.havanagroupcigars.com/index.asp?URL=Home,

www.havanagroupcigars.com/index.asp?Miami-Cigar-Shop, and

www.havanagroupcigars.com/index.asp?Hookah-Bar-Miami.

10. The Copyrighted Photograph was used as part of the Defendant's website homepage directly above the following Title: "Welcome to the Havana Group Cigars Voted the #1 Cigar Shop in Miami and now with Martini Bar."

COUNT I

INFRINGEMENT OF COPYRIGHT PURSUANT TO 17 U.S.C. §101 ET SEQ.

11. Plaintiff incorporates herein by this reference each and every allegation contained in each paragraph above.
12. Plaintiff is, and at all relevant times has been, the copyright owner or licensees of exclusive rights under United States copyright with respect to certain copyrighted photograph, including but not limited to "ipw0095", the copyrighted photograph identified in Exhibit A attached hereto ("Copyrighted Photograph"), of which is the subject of a valid Certificate of Copyright Registration issued by the Register of Copyrights (VAU 1-224-378) (Exhibit B). The date of registration for "ipw0095" is within three months of the initial publication of the work on Plaintiff's website: http://cigarobsession.com/cigar_art/ (image 94/250).
13. Among the exclusive rights granted to each Plaintiff under the Copyright Act are the exclusive rights to reproduce the Copyrighted Photograph and to distribute the Copyrighted Photograph to the public.
14. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, has used the Copyrighted Photograph on Defendant's public website,

www.havanagroupcigars.com. Specifically, Defendant copied and published the Copyrighted Photograph on two separate web pages: www.havanagroupcigars.com/index.asp?URL=Home, and www.havanagroupcigars.com/index.asp?Hookah-Bar-Miami. In doing so, Defendant violated Plaintiff's exclusive rights of reproduction and distribution. Defendant's actions constitute infringement of Plaintiff's copyrights and exclusive rights under copyright. (Exhibit B contains a copy of the Defendant's website pages displaying the Copyrighted Photograph).

15. Plaintiff is informed and believes that the foregoing act of infringement was willful and intentional, in disregard of and with indifference to the rights of Plaintiff.
16. As a result of Defendant's infringement of Plaintiff's copyrights and exclusive rights under copyright, Plaintiff is entitled to statutory damages pursuant to 17 U.S.C. § 504(c) for Defendant's infringement of the Copyrighted Photograph. Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 505.

COUNT II

REMOVAL AND ALTERATION OF INTEGRITY OF COPYRIGHT MANAGEMENT INFORMATION PURSUANT TO 17 U.S.C. §1202

17. Plaintiff is informed and believes that Defendant, without the permission or consent of Plaintiff, knowingly and with the intent to conceal infringement, intentionally removed the copyright management information from Plaintiff's Copyrighted Photograph before displaying the Copyrighted Photograph on Defendant's public website, www.havanagroupcigars.com. Specifically, Defendant cropped out the "BGPictures" logo

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applied by Plaintiff to the left bottom corner of the Copyrighted Photograph. In doing so, Defendant violated 17 U.S.C. § 1202(a)(1) and (b)(1).

18. As a result of Defendant's actions, Plaintiff is entitled to actual damages or statutory damages pursuant to 17 U.S.C. § 1203(b)(3). Plaintiff is further entitled to their attorneys' fees and costs pursuant to 17 U.S.C. § 1203(b)(5).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- A. Declaring that Defendant's unauthorized conduct violates Plaintiff's rights under the Federal Copyright Act;
- B. Immediately and permanently enjoining Defendant, their officers, directors, agents, servants, employees, representatives, attorneys, related companies, successors, assigns, and all others in active concert or participation with them from copying and republishing Plaintiff's Copyrighted Photograph without consent or otherwise infringing Plaintiff's copyright or other rights in any manner;
- C. Ordering Defendant to account to Plaintiff for all gains, profits, and advantages derived by Defendant by their infringement of Plaintiff's copyright or such damages as are proper, and since Defendant intentionally infringed Plaintiff's copyright, for the maximum allowable statutory damages for each violation;
- D. Awarding Plaintiff actual and/or statutory damages for Defendant's copyright infringement in an amount to be determined at trial;
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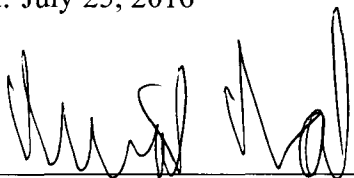
E. Awarding Plaintiff his costs, reasonable attorneys' fees, and disbursements in this action, pursuant to 17 U.S.C. § 505, 17 U.S.C. § 1203(b)(3), and § 1203(b)(5); and

F. Awarding Plaintiff such other and further relief as is just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all claims for which there is a right to jury trial.

Dated: July 25, 2016

A handwritten signature in black ink, appearing to read 'David C. Deal', is written over a horizontal line.

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